

Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 8 1 11 PM '04

In the Matter of

Review of the Section 251 Unbundling
Obligations of Incumbent Local Exchange
Carriers

CC Docket No. 01-338

ORDER

Adopted: September 7, 2004

Released: September 7, 2004

By the Chief, Wireline Competition Bureau:

1. In the Second Report and Order¹ in the above-captioned proceeding, released July 13, 2004, the Commission adopted a new interpretation of section 252(i) of the Communications Act of 1934, as amended,² and revisions to section 51.809 of the Commission's rules.³ Specifically, the Commission eliminated the previous rule and adopted in its place a rule that requires a requesting carrier seeking to avail itself of terms in an interconnection agreement to adopt the agreement in its entirety, taking all rates, terms, and conditions from the adopted agreement. On August 3, 2004, CompTel/ASCENT, KMC Telecom Holdings, Inc., SNIIP LiNK, LLC, XO Communications, Inc., and Xspedius Communications, LLC (Petitioners) filed a Joint Emergency Petition for an administrative stay of the Commission's order pending judicial review.⁴

2. On August 19, 2004, petitioners filed an emergency motion for stay in the United States Court of Appeals for the Ninth Circuit (Ninth Circuit), relying on the same arguments that they presented in their stay petition. The Commission opposed that motion. On August 24, 2004, the Ninth Circuit denied the emergency motion for stay.⁵

¹See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Second Report and Order, FCC 04-164 (rel. July 13, 2004), *appeal pending*, *New Edge Network, Inc. v. FCC*, 9th Cir. No. 04-73800 (and consolidated cases) (filed July 30, 2004).

²47 U.S.C. § 252(i).

³47 C.F.R. § 51.809.


⁴See CompTel/ASCENT, KMC Telecom Holdings, Inc., SNIIP LiNK, LLC, XO Communications, Inc., and Xspedius Communications, LLC Joint Emergency Petition for Stay Pending Judicial Review, CC Docket No. 01-338 (filed Aug. 3, 2004) (Joint Emergency Petition); *see also* Opposition of the United States Telecom Association, SBC Communications Inc., the Verizon Telephone Companies, BellSouth Corporation, and Qwest Communications International Inc. to Joint Emergency Petition for Stay of Order, CC Docket No. 01-338 (filed Aug. 11, 2004).

⁵See *New Edge Network, Inc. v. FCC*, No. 04-73800 (9th Cir. Aug. 24, 2004) (order denying emergency motion for a stay).

3. We find that the Petitioners' Joint Emergency Petition fails to raise any argument that was not fully considered and addressed by the Commission in its Second Report and Order, and otherwise fails to make an adequate showing to justify staying the Commission's order. We therefore find no basis for granting the relief requested by Petitioners.

4. Accordingly, IT IS ORDERED that Petitioners' Joint Emergency Petition IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Jeffrey Carlisle
Chief, Wireline Competition Bureau